

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

BOARD OF DIRECTORS

Co-Chairs

James M. Finberg
Nancy E. Harris
Michael I. Begert
Harry B. Biemond
Brian P. Brosnahan
George H. Brown
Raymond A. Cardozo
Charles S. Crompton, III
Sarah G. Flanagan
Lupe C. Garcia
Daniel M. Hutchinson
Susan K. Jamison
Frederick E. Jordan
Loien Kieve
Bill Lann Lee
Jack W. Londen
David A. Lowe
Angela L. Padilla
Tracy M. Pierson
Pamela Y. Price
Vincent A. Ruiz
James C. Studevant
Robert A. Thompson

MANAGEMENT TEAM

Executive Director

Lateefah Simon

Director of Litigation

Robert Rubin

Associate Director

of Litigation

Oren Sellstrom

Director of Policy

and Programs

Philip Hwang

Managing Director

Sonia Gonzales

Director of Development

and Communications

Bilen Mesfin

December 8, 2010

Secretary Ray LaHood
U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave, SE
Washington, DC 20590

The Honorable Joseph C. Szabo
Administrator
Federal Railroad Administration
Office of Civil Rights
1200 New Jersey Ave, S.E.
Mail Stop 5
Washington, DC 20590

The Honorable Peter M. Rogoff
Administrator
Federal Transit Administration
Office of Civil Rights
East Building, 5th Floor - TCR
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary LaHood and Administrators Szabo and Rogoff:

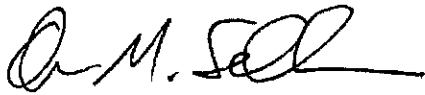
Enclosed please find a copy of our Title VI complaint filed with the United States Department of Transportation against the California High-Speed Rail Authority for its lack of minority-owned business participation in the development of the high-speed rail. Title VI of the Civil Rights of 1964, 42 U.S.C. § 2000d *et seq*, prohibits discrimination in federally assisted programs on account of race, color, or national origin. The complaint requests immediate termination of funding to the project until a full compliance review is undertaken. This complaint falls within the jurisdiction of the Department of Transportation because both the Federal Railroad Administration and the Federal Transit Administration are funding portions of the project.

The Lawyers' Committee for Civil Rights is a non-profit civil rights organization that has provided free legal assistance to clients throughout the San Francisco Bay Area in the areas of race, poverty and immigration since 1968.

131 Steuart Street
Suite 400
San Francisco, CA 94105
TEL 415 543 9444
FAX 415 543 0296
E MAIL info@lccr.com
WEBSITE www.lccr.com

For further information, please contact me at (415) 543-9444, ext. 204.

Sincerely,



LAWYERS' COMMITTEE FOR CIVIL RIGHTS

Oren M. Sellstrom

Counsel for Complainant Associated Professional and Contractors

Cc: The Honorable Barbara Boxer, U.S. Senate
The Honorable Dianne Feinstein, U.S. Senate
The Honorable Nancy Pelosi, U.S. House of Representatives
The Honorable Barbara Lee, U.S. House of Representatives
The Honorable Jackie Speier, U.S. House of Representatives
The Honorable Michael Honda, U.S. House of Representatives
The Honorable Gwen Moore, U.S. House of Representatives
The Honorable Jerry Brown, California Governor
The Honorable Mark Leno, California State Senate
The Honorable Fiona Ma, California State Assembly
Joseph Austin, USDOT Departmental Office of Civil Rights
Rosanne Goodwill, Federal Railroad Administration
Christine Stoneman, U.S. Department of Justice
Peter Gray, U.S. Department of Justice
Congressional Asian Pacific American Caucus
Congressional Black Caucus
Congressional Hispanic Caucus
U.S. Senate Committee on Commerce, Science & Transportation
U.S. Senate Subcommittee on Surface Transportation and Merchant Marine
Infrastructure, Safety, and Security
U.S. House Committee on Transportation and Infrastructure
U.S. House Subcommittee on Railroads, Pipelines, and Hazardous Materials

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INDEX OF EXHIBITS	iv
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	2
A. Overview of the California High-Speed Rail Project and Its Funding	2
B. CHSRA's Contracting	4
III. JURISDICTIONAL FACTS	8
A. Complainants	8
B. Timeliness	8
IV. LEGAL ANALYSIS	9
A. Title VI of the Civil Rights Act of 1964	9
B. CHSRA Is In Violation of Title VI and Its Implementing Regulations	12
V. RELIEF REQUESTED	15
VI. CONCLUSION	16

TABLE OF AUTHORITIES

CASES

<i>Adarand Constructors, Inc. v. Slater</i> , 228 F.3d 1147 (10th Cir. 2000), <i>cert. dismissed sub nom. Adarand Constructors, Inc. v. Mineta</i> , 534 U.S. 103 (2001) (per curiam)	7
<i>Elston v. Talladega County Bd. Of Educ.</i> , 997 F.2d 1394 (11th Cir. 1993)	12
<i>Georgia State Conference of Branches of NAACP v. Georgia</i> , 775 F.2d 1403 (11th Cir. 1985).....	12
<i>Grove City College v. Bell</i> , 465 U.S. 555 (1984)	10
<i>Guardians Ass'n v. Civil Serv. Comm'n</i> , 463 U.S. 582 (1983)	10
<i>Larry P. v. Riles</i> , 793 F.2d 969 (9th Cir. 1984)	12
<i>Lau v. Nichols</i> , 414 U.S. 563 (1974)	10
<i>U.S. Dept. of Transp. v. Paralyzed Veterans of America</i> , 477 U.S. 597 (1986).....	11, 14

STATUTES AND REGULATIONS

49 C.F.R. § 21.5(b)(2)(i), (iv) (2010)	10
49 C.F.R. § 21.5(b)(7) (2010)	10
49 C.F.R. § 21.7(a)(1) (2010)	12
49 C.F.R. § 21.7(b) (2010)	11
49 C.F.R. § 21.11(b) (2010)	9
49 C.F.R. § 21.23(b) (2010)	12
49 C.F.R. pt. 21 app. C(a)(1)(x) (2010)	11
CAL. GOV'T CODE § 6253 (2010)	4
Cal. Exec. Order No. S-02-06 (Mar. 29, 2006)	6
Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d <i>et seq.</i>	<i>passim</i>

INDEX OF EXHIBITS

Memorandum from United States Attorney General Holder to Heads of Executive Departments and Agencies Providing Federal Financial Assistance, Dated Sept. 27, 2010.....	Exhibit A
CHSRA Small Business Reports from R. Weninger, Procurement Officer, to Department of General Services Reports Coordinator, Dated July 21, 2007, Aug. 11, 2008, Aug. 6, 2009, Aug. 5, 2010.....	Exhibit B
CHSRA Ethnicity, Race and Gender Reports	Exhibit C
CHSRA Improvement Plan Outline for Small Business FY 07/08 and FY 08/09.....	Exhibit D
CHSRA Questions and Written Responses for RFQs HSR08-03, HSR08-04 and HSR08-05	Exhibit E

I. INTRODUCTION

California is in the process of constructing a high-speed rail system, with massive financial assistance from the federal government. The project is expected to cost in excess of \$43 billion, making it the country's largest public infrastructure project.¹ The federal government is anticipated to fund nearly half of the project, with \$3.05 billion in federal stimulus funds already awarded,² and an additional \$15-17 billion expected to be awarded before project completion.³

Yet as this enormous public works project gets underway, it has become apparent that the state agency responsible for its oversight is largely excluding minority-owned businesses from the contracting opportunities that the project brings. Through a restrictive procurement system and a *laissez-faire* attitude, the California High-Speed Rail Authority ("CHSRA") is funneling nearly all contracting dollars to large majority-owned firms. CHSRA's practices are in direct violation of Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibit federal funding recipients from engaging in unjustified practices that exclude minorities.

As the United States Attorney General has recently reiterated in the context of the federal stimulus funds, "it is imperative that federal agencies ensure that grant recipients do not discriminate."⁴ Complainant, an association of minority business organizations throughout the State, accordingly hereby asks the United States Department of Transportation ("USDOT") to halt further award or disbursement of federal funds to California's high-speed rail project, until contracting opportunities are

¹ California High-Speed Rail Authority, High-Speed Rail Benefits California's Economy (2010) <http://cahighspeedrail.ca.gov> (follow "California Benefits" hyperlink) (last visited Nov. 29, 2010).

² See *id.* (noting federal award of \$2.34 billion for high-speed rail); see also Press Release, California High-Speed Rail Authority, California High-Speed Rail Awarded \$715 Million (Oct. 28, 2010), http://cahighspeedrail.ca.gov/pr_715_Million.aspx (noting federal award of \$715 million for high-speed rail) (last visited 11/12/10) (hereinafter CHSRA Award).

³ California High-Speed Rail Authority, Fact Sheet: December 2009 Business Plan Report to the Legislature, at 1 (2009), <http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=702> (hereinafter CHSRA Fact Sheet).

⁴ Memorandum from Attorney General Holder to Heads of Executive Departments and Agencies Providing Federal Financial Assistance (Sept. 27, 2010), http://www.usda.gov/documents/ARRA_Non-Discrimination_Statement_2.pdf. See Ex. A at 1.

1 made available to all businesses on an equal basis. With billions of dollars of future contracting dollars
2 still at stake, immediate federal intervention is critical.

3 4 **I. FACTUAL BACKGROUND**

5 **A. Overview of the California High-Speed Rail Project and Its Funding**

6
7 Across the nation, many states are beginning to construct high-speed rail systems to reduce
8 dependence on fuel-powered modes of transportation, such as automobiles and airplanes. Because of
9 the perceived convenience and positive environmental impact of these high-speed trains, more states
10 are looking to use them to transport people from one urban area to the next.⁵ Massive amounts of
11 federal funding, especially American Recovery and Reinvestment Act ("ARRA") or stimulus funds,
12 have been allocated to begin building these rail systems.⁶ At the same time, railway stations are being
13 renovated and expanded to accommodate the trains. *See infra* at 11.

14
15 In California, the state agency responsible for oversight of the rail project is the California High-
16 Speed Rail Authority ("CHSRA"). According to CHSRA, the high-speed rail will travel through
17 fourteen regions throughout the State of California and cover over 800 miles from Sacramento to San
18 Diego.⁷ The CHSRA boasts that the electrically-powered train will reach speeds of up to 220 miles per
19 hour and will transport travelers from San Francisco to Los Angeles in under three hours.⁸ The project
20

21
22 ⁵ See, e.g., Florida High Speed Rail, <http://www.floridahighspeedrail.org> (Florida is on track to build a fully
23 functioning high-speed rail by 2015 that will run from Tampa to Orlando) (last visited Nov. 18, 2010); Southeast
24 High-Speed Rail Corridor, <http://www.sehsr.org> (this railway will begin in Washington, D.C. with stops along the way
25 in Virginia, North Carolina, South Carolina and Georgia until reaching Jacksonville, Florida) (last visited Nov. 18,
26 2010).

27 ⁶ Michael Cooper, *Slice of Stimulus Package Will Go To Faster Trains*, N.Y. TIMES, Feb. 19, 2009, at A14, available
28 at <http://www.nytimes.com/2009/02/20/us/20rail.html> (noting \$8 billion investment in high-speed rail in stimulus
package).

⁷ California High-Speed Rail Authority, Proposed Route Map,
http://cahighspeedrail.ca.gov/Proposed_Route_Planner.aspx (last visited Oct. 5, 2010) (hereinafter Proposed Route
Map).

⁸ California High-Speed Rail Authority, Project Vision and Scope,
http://www.cahighspeedrail.ca.gov/project_vision.aspx (last visited Oct. 8, 2010).

1 includes twenty-four terminals along the route in cities such as: San Jose, Fresno, Bakersfield,
2 Burbank, Anaheim, Escondido, San Fernando and San Diego.⁹

3 The project is hugely expensive. In total, the cost of the high-speed rail is expected to
4 approach \$45 billion, almost half of which is projected to be from the federal government.¹⁰ The
5 source of the funding will likely be a combination of additional ARRA funds, federal loan programs
6 and appropriations through the transportation budget.¹¹ As of October 2010, the high-speed rail has
7 received \$3.05 billion in federal awards.¹² Over the course of the project, the federal government is
8 expected to award at least \$15-17 billion.¹³ On November 15, 2010, Transportation Secretary Ray
9 LaHood committed to reallocate money for high-speed rails to states with projects underway if other
10 states reject the funds, meaning that California's project may receive even more federal funding.¹⁴

12 Additional federal money has been specifically allocated to renovate and expand numerous
13 existing stations along the route to avoid the excess cost of building new stations and for the
14 convenience of riders who already use the stations. For example, \$16 million was recently awarded to
15 expand the Caltrain commuter train station at 4th and King Streets in San Francisco, which will serve
16 the San Francisco to San Jose corridor.¹⁵

18 Local funding will also contribute to the construction of the rail totaling approximately \$4-5
19 billion,¹⁶ and private funds in excess of \$10 billion are expected to play a major role in funding the
20 project.¹⁷ However, by far the largest single source of funding will be federal taxpayer dollars.

22 ⁹ Proposed Route Map, *supra* note 7.

23 ¹⁰ CHSRA Fact Sheet, *supra* note 3.

24 ¹¹ *Id.*

25 ¹² California High-Speed Rail Authority, High-Speed Rail Benefits California's Economy (2010)
26 <http://cahighspeedrail.ca.gov> (follow "California Benefits" hyperlink) (noting federal award of \$2.34 billion for high-
27 speed rail) (last visited 11/12/10); *see also* CHSRA Award, *supra* note 2.

28 ¹³ CHSRA Fact Sheet, *supra* note 3, at 1.

¹⁴ Michael D. Bolden, *State Projects Will Drive Funding for High-Speed Rail*, WASH. POST, Nov. 15, 2010, available
at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/15/AR2010111506968.html>.

¹⁵ CHSRA Award, *supra* note 12.

¹⁶ CHSRA Fact Sheet, *supra* note 3, at 2.

¹⁷ *Id.*

1 **B. CHSRA's Contracting**

2 As with most public works projects, the work on California's high-speed rail is being
3 performed largely by private companies with whom CHSRA contracts. The project thus has the
4 potential to provide enormous benefit to a wide cross-section of California businesses and local
5 communities through which the train runs – but only if CHSRA is required to take the steps that federal
6 law requires to ensure a fully open and competitive procurement system. Unfortunately, CHSRA's
7 contracting to date appears to be largely funneled into an "old boys" network, with little minority
8 business participation. This is not surprising, since CHSRA has done virtually nothing to ensure equal
9 opportunity for such businesses.
10

11 For example, Complainant's analysis of the ten largest program management and design team
12 contract awards, worth hundreds of millions of dollars cumulatively, indicates that of the 134 prime
13 and subcontractors participating, only approximately 12 are minority-owned firms.¹⁸ This includes
14 those with exceedingly small subconsulting contracts in comparison with overall contracting dollars,
15 such as a minority-owned business with a \$100,000 subconsulting contract on a \$75 million prime
16 contract. On October 25, 2010, Complainant's counsel filed a Public Records Act request with
17 CHSRA, asking the agency to provide information that would demonstrate just how low dollar
18 participation by minority-owned firms is on these large design contracts. Despite statutory
19 requirements that a response be provided within ten days, *see* CAL. GOV'T CODE § 6253, and multiple
20 follow-up calls and e-mails, the agency has refused to divulge this information.
21

22 Other publicly available information, however, paints the same grim picture as that found by
23 Complainant. For example, under a state Executive Order, CHSRA is mandated to take necessary
24 steps to ensure that procurement and contracting practices are implemented in order to meet or exceed
25
26

27 ¹⁸ Federal agencies certify qualified minority-owned firms as Disadvantaged Business Enterprises ("DBE"). *See*
28 http://www.dot.ca.gov/hq/bep/find_certified.htm (listing DBEs certified through California Department of

1 a state-wide small business goal of 25 percent.¹⁹ Since many minority-owned businesses are small
2 businesses, adherence to these small business mandates would undoubtedly lead to greater minority
3 business participation. Yet over the past 6 fiscal years (FY 2004-2005 through FY 2009-2010), only a
4 paltry 3.54 percent of contracting dollars have gone to small or micro-businesses. *See* Ex. B.

Fiscal Year (FY)	Total Contract \$	Small Business/ Micro- Business \$
2004-05	\$18,755	\$1,184
2005-06	\$8,512	\$3,263
2006-07	\$332,187,900	\$7,976,173
2007-08	\$2,187,823	\$24,239
2008-09	\$169,025,908	\$5,359,981
2009-10	\$18,460,848	\$5,118,018
TOTAL	\$521,889,746	\$18,482,858 (3.54%)

Source: Exhibit B, CHSRA Annual Contracting Activity Reports.

18 The Ethnicity, Race and Gender ("ERG") Reports that state agencies submit to the Department of
19 General Services with their small business reports are designed to reflect how many of these small
20 business contracting opportunities are extended to minority- and women-owned businesses, yet
21 CHSRA has left these reports entirely blank for the last four years. *See* Ex. C. On its forms each year,
22 CHSRA has simply stated "Our agency does not have a system to track this information. However, we
23 are developing a system to track it in future contracts if the voluntary information is reported," or "No
24 information provided." *See* Ex. C at 1, 4.

27 Transportation). Complainant's analysis is based on cross-checking firms listed on CHSRA's materials as companies
28 that have received contracts with the DBE database.

1 These small business reports buttress what Complainants have found: that minority-owned
2 businesses have received a vanishingly small percentage of CHSRA's contracts. Moreover, the reports
3 demonstrate CHSRA's lackadaisical attitude towards ensuring an open and competitive procurement
4 system. Each year that CHSRA failed to meet its small business goal, it was required by Executive
5 Order to develop a plan for enhancing contracting opportunities for small businesses.²⁰ Given the
6 disproportionate number of minority-owned businesses that are also small, an aggressive approach to
7 ensuring small business participation would have opened many opportunities for minority-owned
8 businesses. Yet despite the failure year-after-year to even approach the 25% goal, CHSRA's corrective
9 "plans" typically consisted of only a few boilerplate sentences. For example, CHSRA's plan for 2007-
10 2008 was as follows: "The department will inform all employees involved with contracts to be aware
11 of the 25% [small business] participation goal for the 07/08 fiscal year...." and "Our department will
12 include the following language in contract bid advertisements: 'The State encourages Small Businesses
13 to apply.'" See Ex. D at 1. Unsurprisingly, the goals were not met in the subsequent year either. And
14 upon failing to meet the goals again, CHSRA simply recycled the *exact same boilerplate language* for
15 the next year's corrective "plan." See Ex. D at 2.

18 Meanwhile, minority-owned businesses continued to be shut out of contracting opportunities,
19 even when exceedingly simple steps could have helped alleviate the problem. For example, in July
20 2008, CHSRA sent out several Requests for Qualifications ("RFQ") for northern California
21 environmental and engineering contracts. Minority-owned business owners specifically notified
22 CHSRA that they were interested in participating as subconsultants and asked CHSRA to provide a list
23 of expected prime consultants, "so we can offer them our services and discuss teaming, or offer to
24

25 ¹⁹ Cal. Exec. Order No. S-02-06 (Mar. 29, 2006), <http://gov.ca.gov/executive-order/556>.

26 ²⁰ *Id.* ("State agencies, departments, boards and commissions that have not achieved the small business participation
27 goal must submit an Implementation and Corrective Action Plan to the DGS. The DGS will share these plans with the
28 California Small Business Advocate and together they will explore ways, including Memorandums of Understanding,
to work with departments to improve performance.").

1 provide our services to their firms.” See Ex. E at 2. CHSRA’s response was singularly unhelpful: the
2 agency provided a list of firms that had requested the RFQ from one source (the State Contracts
3 Register), yet omitted any firm that had “downloaded the RFQs from the Authority’s website,
4 contacted the Authority staff directly, or took hard copies at CHSRA board meetings.” See Ex. E at 2.
5 When minority-owned firms asked if CHSRA at least maintained some document where minority-
6 owned firms could let primes know of their interest and availability, CHSRA responded with a blunt
7 one-word answer: “No.” See Ex. E at 2.
8

9 As study after study have shown, this kind of *laissez faire* attitude towards minority business
10 inclusion means that contracts simply end up in the hands of large majority firms and those in their
11 networks.²¹ By contrast, simple steps can be undertaken to break down discriminatory barriers. Efforts
12 that other public agencies routinely take to ensure equity include:

- 13 • Aggressive outreach to minority-owned firms to inform them of upcoming contracting
14 opportunities to ensure that contracts are not simply funneled into the “old boys” network;
- 15 • Clear and enforceable mandates to prime contractors to ensure that they notify a wide range of
16 subcontractors and subconsultants about contracting opportunities;
- 17 • Mechanisms such as formal pre-bid and pre-submittal meetings that primes are required to
18 attend, to ensure that prospective subconsultants know which primes plan to bid;
19
20

21 ²¹ See, e.g., *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1174 (10th Cir. 2000), *cert. dismissed sub nom.*
22 *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) (per curiam) (“The Meaning and Significance for Minority
23 Business of the Supreme Court Decision in the City of Richmond v. J.A. Croson: Hearing Before the Legislative &
24 Nat’l Sec. Subcomm. of the House Comm. on Gov’t Operations, 100th Cong. 111 (1990) (“The Significance of
25 *Croson*”) (statement of Manuel Rodriguez, President, R&D Development, Inc., specializing in mechanical
26 construction, and past president and founder of the National Hispanic Association of Construction Enterprises) (“Few
27 [minorities] today have families from whom they can inherit a construction business.”); see also Minority Business
28 Development Program Reform Act of 1987: Hearings on S. 993 & H.R. 1807 Before the Senate Comm. on Small
Bus., 100th Cong. 127 (1988) (statement of Parren Mitchell, Chairman, Minority Business Enterprise Legal Defense
and Education Fund) (noting the “harsh reality” of the “old-boy network” that prevents minority-owned firms from
breaking into the private sector); H.R. Rep. No. 103-870 15 & n.36 (1994) (discussing evidence of the discriminatory
exclusion of minority firms from business networks); The Compelling Interest, 61 Fed. Reg. at 26,057 & nn.82-83
(citing studies explaining minorities’ exclusion from the construction trades as a result of the lack of familial
connections”).

- Vigilant adherence to small business contracting requirements;
- Unbundling large contracts to facilitate a diverse pool of contractor participation;
- Open and transparent systems that allow community members, advocates, and the media to track where contract dollars are going and monitor minority business inclusion;
- Leadership from the top that emphasizes the importance of full inclusion, holds agency staff accountable for meeting contracting goals, monitors progress, and demands change where data shows inequities.

By contrast, CHSRA has utterly failed in this regard, ignoring both direct pleas from minority-owned businesses and mandates that require them to do more. The result is all too predictable: a closed contracting system with virtually no minority-business participation.

II. JURISDICTIONAL FACTS

A. Complainants

Associated Professionals and Contractors ("APAC") is a non-profit organization founded to encourage, develop, and support Disadvantaged Business Enterprises ("DBEs") and other businesses traditionally excluded from equal opportunity. APAC is based in Oakland and draws its membership from throughout the State. Members include trade associations, businesses, and individuals. APAC and its members have continually raised concerns about the lack of minority business participation on the high-speed rail project with CHSRA, as well as with state and federal legislative leaders. To date, however, there has been little progress.

B. Timeliness

As with any application for federal funding, the recipient, CHSRA, is required to submit an assurance that it will comply with all requirements for funding. *See* 49 CFR § 21.7. Importantly, the recipient is expected to adhere to all regulations, such as the non-discrimination requirements

1 mandated by Title VI, throughout the duration of the project in which federal funds are used. *Id.* The
2 Complaint here is particularly timely, in that federal ARRA funds have been disbursed to the high-
3 speed rail project as recently as October 2010, which is within the applicable 180 day period to bring a
4 claim.²² See 49 C.F.R. § 21.11(b).

6 7 **III. LEGAL ANALYSIS**

8 **A. Title VI of the Civil Rights Act of 1964**

9 Discrimination against minority populations is prohibited under Title VI of the Civil Rights Act
10 of 1964, which provides:

11 No person in the United States shall, on the ground of race, color, or national origin,
12 be excluded from participation in, be denied the benefits of, or be subjected to
discrimination under any program or activity receiving federal financial assistance.

13 42 U.S.C. § 2000d. As the U.S. Department of Justice has recounted, “[i]n calling for its enactment,
14 President John F. Kennedy identified ‘simple justice’ as the justification for Title VI:

15 Simple justice requires that public funds, to which all taxpayers of all races contribute,
16 not be spent in any fashion which encourages, entrenches, subsidizes, or results in
17 racial discrimination. Direct discrimination by Federal, State, or local governments is
18 prohibited by the Constitution. But indirect discrimination, through the use of Federal
funds, is just as invidious; and it should not be necessary to resort to the courts to
prevent each individual violation.

19 CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. II (2001).²³

20
21 While Title VI prohibits intentional discrimination, most federal agencies have promulgated regulations
22 that further prohibit actions by recipients that have an impermissible discriminatory *impact* on minority
23 populations. For example, federal Department of Transportation regulations provide:

24 A recipient, in determining the types of services ... or other benefits ... which will be
25 provided under any such program, or the class of persons to whom, or the situations in
26 which, such services, financial aid, other benefits, or facilities will be provided under

27 ²² CHSRA Award, *supra* note 2.

28 ²³ Citing H.R. MISC. DOC. NO. 124, 88th CONG., 1ST SESS. 3, 12 (1963); S. REP. NO. 100-64, at 2 (1987), *reprinted in*
1988 U.S.C.C.A.N. 3, 4.

1 any such program ... *may not, directly or through contractual or other arrangements,*
2 *utilize criteria or methods of administration which have the effect of subjecting*
3 *persons to discrimination because of their race, color, or national origin,* or have the
effect of defeating or substantially impairing accomplishment of the objectives of the
program with respect to individuals of a particular race, color, or national origin.

4 49 CFR § 21.5(b)(2)(i), (iv) (emphasis added).²⁴

5 Moreover, the USDOT has mandated that applicants or recipients take affirmative steps to
6 overcome past practices that may have excluded minorities:
7

8 Where prior discriminatory practice or usage tends, on the grounds of race, color, or
9 national origin to exclude individuals from participation in, to deny them the benefits
of, or to subject them to discrimination under any program or activity to which this
10 part applies, *the applicant or recipient must take affirmative action to remove or*
11 *overcome the effects of the prior discriminatory practice* or usage. Even in the absence
of prior discriminatory practice or usage, a recipient in administering a program or
12 activity to which this part applies, is expected to take affirmative action to assure that
no person is excluded from participation in or denied the benefits of the program or
activity on the grounds of race, color, or national origin.

13 49 CFR § 21.5(b)(7) (emphasis added).

14 By design, Title VI's reach is extremely broad. It specifically covers not only the particular
15 items funded by federal dollars, but all of the operations of any entity receiving federal assistance.²⁵
16 When the U.S. Supreme Court construed this coverage in a limited way, Congress quickly stepped in to
17 re-affirm Title VI's "institution-wide coverage," since "eliminating discrimination from institutions
18 which receive federal financial assistance [can] only be accomplished if the civil rights statutes [are]
19 given the broadest interpretation."²⁶ The types of activities covered are likewise exceedingly far-
20
21

22 ²⁴ Lau v. Nichols, 414 U.S. 563, 568 (1974) (noting "discrimination is barred which has that *effect* even though no
23 purposeful design is present..."); see also Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 593 (1983) (noting,
"Under these circumstances, it must be concluded that Title VI reaches unintentional, disparate-impact discrimination
as well as deliberate racial discrimination.").

24 ²⁵ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. VII, §D (2001),
25 http://www.justice.gov/crt/grants_statutes/legalman.php (hereinafter DOJ TITLE VI MANUAL).

26 ²⁶ In 1984 the Supreme Court decided Grove City College v. Bell, which severely limited the application of Title VI.
26 465 U.S. 555 (1984). In response, Congress swiftly enacting the Civil Rights Restoration Act of 1987 ("CRRRA"). As
27 explained in the Department of Justice Title VI Manual, "the CRRRA was passed to restore broad interpretations,
consistent with original congressional intent, and to reverse the Supreme Court's narrow ruling in *Grove City*." DOJ
28 TITLE VI MANUAL, *supra* note 25, at CH. VIII, § § B, C. Civil Rights Restoration Act of 1987, S. Rep. No. 64, 100th
Cong. § 5 (1st Sess. 1987) (stating, "The legislative history of the statutes in question shows Congress intended

1 reaching, and the regulations specifically cite a recipient's contracting as an example of an activity that
2 falls within Title VI's purview. 49 CFR pt. 21 app. C(a)(1)(x).

3 An agency such as CHSRA is bound by the prohibitions of Title VI in all its activities from the
4 moment it agrees to accept federal funds. In order to receive federal funding, applicants must sign
5 assurances of compliance with federal laws and regulations. 49 CFR § 21.7(b). In *U.S. Dep't. of*
6 *Transportation v. Paralyzed Veterans of America*, the Supreme Court held, "Under [Title VI],
7 Congress enters into an arrangement in the nature of a contract with the recipients of the funds: the
8 recipient's acceptance of the funds triggers coverage under the nondiscrimination provision." 477 U.S.
9 597, 605 (1986).

11 Moreover, the high-speed rail will utilize twenty-four proposed stops along its route.²⁷ Most of
12 these terminals are already in use by other trains: Transbay Terminal (San Francisco); Millbrae/San
13 Francisco Airport; San Jose Diridon; Gilroy; Sylmar; Union Station and San Diego Santa Fe Depot.²⁸
14 Further, the trains that use these stations – Caltrain, Bay Area Rapid Transit ("BART"), Santa Clara
15 Lightrail and Metrolink – already receive federal funding through the Federal Transit Administration
16 and thus are covered by Title VI.²⁹ In accordance with the DOT regulations, any assistance extended to
17 any part of a facility, even one that is already in existence and being renovated or expanded such as the
18 current train terminals, is considered a part of the project and is therefore covered under Title VI. 49

21 institution-wide coverage. In enacting the four civil rights statutes, Congress intended that each be broadly interpreted
22 to provide effective remedies against discrimination. The debates emphasized both the anticipated breadth of coverage
23 as well as the important and fundamental aims these statutes would achieve. This was clear not only in connection
24 with Title VI, but also with the other civil rights statutes which were modeled on Title VI with respect to both
25 language and intended effect. . . . It was understood at the outset that the task of eliminating discrimination from
26 institutions which receive federal financial assistance could only be accomplished if the civil rights statutes were given
27 the broadest interpretation.").

28 ²⁷ California High-Speed Rail Authority, Interactive Map, http://cahighspeedrail.ca.gov/trip_planner.aspx (last visited
Oct. 8, 2010).

²⁸ *Id.*

²⁹ Caltrain, <http://www.caltrain.com> (Caltrain is a commuter train between San Francisco and Santa Clara) ; Bay Area
Rapid Transit, <http://www.bart.gov/> (BART provides service throughout the East Bay to the San Francisco peninsula);
Santa Clara Valley Transportation Authority, http://www.vta.org/services/light_rail_services.html (lightrail service

1 CFR § 21.23(b). "In the case where the assistance is sought for the construction of a facility or part of
2 a facility, the assurance shall in any event extend to the entire facility and to facilities operated in
3 connection therewith." 49 CFR § 21.7(a)(1).

4 **B. CHSRA Is In Violation of Title VI and its Implementing Regulations.**

5 As the Department of Justice has counseled:

6
7 To establish discrimination under a disparate impact scheme, the investigating agency
8 must first ascertain whether the recipient utilized a facially neutral practice that had a
9 disproportionate impact on a group protected by Title VI. *Larry P. v. Riles*, 793 F.2d
10 969, 982; *Elston*, 997 F.2d at 1407 (citing *Georgia State Conference of Branches of*
11 *NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)). The agency must show a
causal connection between the facially neutral policy and the disproportionate and
adverse impact on a protected Title VI group.

11 CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. VIII, § B (2001).

12 Here, these elements are easily met. As the statistics cited above demonstrate, CHSRA's
13 contracting system, while facially neutral, has a disproportionate impact on minority-owned
14 businesses. To date, there has been virtually no minority business participation on CHSRA contracts.
15 In the face of these numbers, CHSRA appears to fall back on the much-used and often-discredited
16 excuse that minority businesses are simply not available to do the work. For example, in FY 2006-
17 2007, when over \$332 million was contracted, CHSRA claimed that its failure to achieve even 3%
18 participation by small or micro-businesses was "due to the highly specialized field of high-speed rail
19 systems...." See Ex. B at 1.
20

21 Complainant knows this to be untrue, as many of its members are highly qualified to do
22 CHSRA work, and have been for years. Nearly thirty years ago, Transportation Secretary William
23 Coleman initiated the Northeast Corridor Project, a railroad construction project members of
24 Complainant organization worked on between Washington, D.C. and Boston, Massachusetts, which
25

26
27 provided from Silicon Valley to San Jose); Metrolink, <http://www.metrolinktrains.com/> (commuter train service from
28 Los Angeles County to San Diego County) (last visited Nov. 3, 2010).

1 achieved a 15 percent participation goal for minority- and women-owned businesses.³⁰ More recently,
2 in a similar context, the California Department of Transportation (“Caltrans”) asserted that it did not
3 have adequate information about minority- and women-owned business availability to do
4 transportation work. Yet when it commissioned a study to examine this question, it came up with a
5 minimum level of at least 13.5% availability; other experts who have examined the question have
6 pinned the number as high as 28.76%.³¹ While Caltrans’ contracting is not co-extensive with
7 CHSRA’s, there is substantial overlap, particularly in terms of the relevant industries involved. As
8 Caltrans has found, minority-owned civil engineers, structural engineers, land surveyors, and other
9 professionals – many of the same industries that CHSRA contracts with – are available in great
10 numbers in California.³²

12 Nor can there be any doubt that CHSRA’s contracting system is the cause of their abysmally
13 low minority-business participation. Numerous studies at the federal and state levels have
14 demonstrated over and over again that the sort of “business as usual” policies that CHSRA engages in
15 result in under-utilization of minority-owned businesses. *See supra* at 7 & n.21. In order to justify this
16 exclusion, CHSRA must show a “substantial legitimate justification” for its practices, which it cannot
17 do.³³ There is no reason why simple steps such as outlined above cannot be taken to ensure an open
18 and fair procurement system.³⁴ *See supra* at 7-8.

21 ³⁰ Louis S. Thompson, Federal Railroad Administration, Associate Administrator for Intercity Programs, The
22 Northeast Corridor Improvement Project, Address at the Eighteenth Henry M. Shaw Lecture in Civil Engineering at
North Carolina State University 21 (Nov. 10, 1982), *available at* [http://www.tgaassoc.com/documents/northeast-](http://www.tgaassoc.com/documents/northeast-corridor.pdf)
23 [corridor.pdf](http://www.tgaassoc.com/documents/northeast-corridor.pdf).

24 ³¹ BBC RESEARCH AND CONSULTING, AVAILABILITY AND DISPARITY STUDY at section II, page 10 (2007),
http://www.dot.ca.gov/hq/bep/study/Avail_Disparity_Study_Final_Rpt.pdf (hereinafter DISPARITY STUDY) (finding
25 13.5% DBE availability); Reply to Report of Plaintiff’s Expert by Dr. Jon Wainwright Supporting Defendants at 36,
Associated General Contractors of America v. California Department of Transportation, No. 2:09-CV-01622
(E.D.C.A. Oct. 28, 2010) (on file with counsel) (suggesting much higher DBE availability).

26 ³² DISPARITY STUDY, *supra* note 31, at app. C, at 3-4 (listing all subindustries included in Caltrans study, including
various types of engineering services, construction management, transportation consultants, etc.).

27 ³³ DOJ TITLE VI MANUAL, *supra* note 25, at CH. VIII, § B.

28 ³⁴ Even if CHSRA were able to show a legitimate justification (which it cannot), it would still be in violation of Title
VI if there are “equally effective alternative practices” that would result in greater equity. *See id.*

1 In its response to a recent Public Records Act request, CHSRA insinuated that it is not covered
2 by these federal prohibitions because it had not yet actually received any of the federal dollars it has
3 been awarded. This cramped interpretation is at odds with the broad reach of Title VI. As the U.S.
4 Department of Justice ("DOJ") has stated in a Title VI compliance manual, "It is important to note that
5 by signing an assurance, the recipient is committing itself to complying with the nondiscrimination
6 mandates. Even without a written assurance, courts describe obligations under nondiscrimination laws
7 as similar to a contract...."³⁵ Thus, as a recipient of the federal funding award of \$3.05 billion, it is
8 undisputable that the CHSRA is prohibited from discriminating on the basis of race under federal law.
9

10 Complainants are not the first to flag CHSRA's non-compliance with federal law. A California
11 State Auditor Report issued in April 2010 contains an entire section entitled "The Authority Lacks
12 Systems To Comply With State Law And Federal Grant Requirements."³⁶ The Audit details how
13 CHSRA lacks the systems necessary to comply with federal requirements. While the Audit does not
14 specifically identify Title VI, it notes that "[n]oncompliance with grant provisions could jeopardize
15 [CHSRA's] ability to receive those funds and to compete for future grants – both of which are essential
16 given its heavy planned reliance on federal funds."³⁷ A subsequent audit turned up similar problems,
17 concluding that CHSRA "is not fully prepared to distribute and monitor ARRA [federal stimulus]
18 funds."³⁸ Among gaps noted are that "policies and procedures to ensure the appropriate expenditure of
19 ARRA funds have not been detailed...."³⁹
20
21
22

23 ³⁵DOJ TITLE VI MANUAL, *supra* note 25, at CH. VI, § B (citing *Paralyzed Veterans*, 477 U.S. at 605).

24 ³⁶ CALIFORNIA STATE AUDITOR, BUREAU OF STATE AUDITS, HIGH-SPEED RAIL AUTHORITY: IT RISKS DELAYS OR AN
25 INCOMPLETE SYSTEM BECAUSE OF INADEQUATE PLANNING, WEAK OVERSIGHT, AND LAX CONTRACT MANAGEMENT
26 28 (Apr. 2010), <http://www.bsa.ca.gov/pdfs/reports/2009-106.pdf>.

27 ³⁷ *Id.* at 29.

28 ³⁸ INSPECTOR GENERAL LAURA CHICK, STATE OF CALIFORNIA OFFICE OF THE INSPECTOR GENERAL, FINAL REVIEW
REPORT – REVIEW OF THE CALIFORNIA HIGH SPEED RAIL AUTHORITY 4 (Oct. 2010),
<http://www.inspectorgeneral.ca.gov/res/docs/pdf/Final%20Report%20High%20Speed%20Rail%20with%20Cover%20Letter.pdf>.

³⁹ *Id.*

1 In sum, CHSRA's procurement system disproportionately excludes minority-owned
2 businesses, and there is no justification for this exclusion.
3
4

5 **V. RELIEF REQUESTED**

6 Complainant's request is simple: that USDOT stop providing federal funds to CHSRA until
7 CHSRA brings its contracting practices in line with federal civil rights laws. Just as Title VI's
8 coverage is broad, so too are the remedies available to federal agencies awarding federal funds.
9 Complainant respectfully requests that USDOT open a formal investigation of CHSRA's contracting
10 practices; immediately attempt to secure the agency's voluntary compliance with federal civil rights
11 laws; and suspend any further federal disbursements until compliance is complete.⁴⁰
12

13 There are numerous ways in which CHSRA can and must open up its procurement practices.
14 *See supra* at 7-8. USDOT can also facilitate CHSRA's actions by bringing the entire high-speed rail
15 project under the FTA's federal Disadvantaged Business Enterprise (DBE) program. USDOT is
16 providing federal financial assistance to CHSRA through both the Federal Transit Administration
17 (primarily for expanding existing rail stations) and through the Federal Railroad Administration
18 (primarily for the rail lines themselves). The federal DBE program, which requires federal funding
19 recipients to undertake specific measures to ensure DBE participation, applies to FTA but not FRA.
20 Given that both these agencies are under the auspices of USDOT, USDOT should not let bureaucratic
21 hurdles thwart goals of contracting equity. Rather, the entire high-speed rail project should be brought
22 under the FTA's DBE program.
23
24
25
26

27 ⁴⁰ Complainant and their counsel request that the investigating agency contact them upon initiating the investigation, as
28 they can provide additional background information and suggest specific areas for investigation and inquiry.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9

0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

1

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

EXHIBIT A




Office of the Attorney General

Washington, D.C. 20530

September 27, 2010

MEMORANDUM: FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
PROVIDING FEDERAL FINANCIAL ASSISTANCE

FROM:  THE ATTORNEY GENERAL

SUBJECT: Enforcement of Nondiscrimination Laws in Programs and Activities that
Receive American Recovery and Reinvestment Act Funding

Since the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the federal government has distributed a large number of federal grants as part of the effort to stimulate the American economy. The federal government has an ongoing responsibility to ensure that all Americans receive the benefit of programs and activities that receive federal financial assistance.¹

Pursuant to Executive Order 12250, the Department of Justice (DOJ) has taken a number of steps to ensure that federal agencies are effectively fulfilling their obligation to enforce statutes that prohibit discrimination in programs or activities that receive Recovery Act funds. Under the Executive Order, DOJ is charged with ensuring the consistent and effective enforcement of Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin, including with respect to language access for limited English proficient persons), Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability), Title IX of the Education Amendments Act of 1972 (prohibiting gender discrimination in education and training programs), and a variety of program-specific statutes that prohibit discrimination in federally funded programs.

Because these prohibitions apply to recipients of Recovery Act funding, it is imperative that federal agencies ensure that grant recipients do not discriminate. Indeed, on April 3, 2009, the Office of Management and Budget issued Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, stating that "agencies should encourage recipients to implement best practices for ensuring that all individuals – regardless of race, gender, age, and national origin – benefit from the Recovery Act."

¹ This Memorandum does not extend to federal contracting, which is not covered under Executive Order 12250. However, federal contractors receiving Recovery Act funds may be covered by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Veterans Readjustment Act of 1974 (VEVRAA). The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces these and other requirements related to federal contract compliance. See http://www.dol.gov/ofcc/arra_web.html.

Federal agencies have done an outstanding job delivering funds to recipients as quickly as possible, in order to achieve the Recovery Act's purpose of further stimulating the economy and creating jobs. There are, however, steps that federal agencies can take to encourage nondiscrimination in Recovery Act funded programs. As an initial step, federal agencies should examine their current practices for ensuring nondiscrimination in Recovery Act funded programs, and evaluate whether these are effective at detecting and deterring discriminatory conduct. As they oversee and distribute funds, agencies should examine their practices to ensure that the benefits of these economic stimulus programs are distributed in a nondiscriminatory manner. Specifically, agencies should take necessary steps to ensure that this money is spent in a manner that does not exclude, or otherwise discriminate against, any individual in violation of Title VI, Title IX, or Section 504. None of these efforts will require new regulatory initiatives. Existing regulations that permit agencies to enforce Title VI, Title IX, and Section 504 should let us do the job. Federal agencies should consider the following approaches:

- Federal funding agencies should post prominent notices on their websites concerning the applicability of Title VI, Title IX, and Section 504 to projects funded by the Recovery Act.
- Federal agencies should require recipients to adhere to the terms of their civil rights assurances and other agreements, including any provisions pertaining to the collection and analysis of racial and ethnic data.
- Federal agencies should utilize readily available data, such as census data, through demographic mapping and other technologies, to identify situations in which racially or ethnically identifiable communities may be harmed by, or excluded from the benefits of, a Recovery Act funded project. Such circumstances may warrant pre- or post-award compliance reviews or technical assistance to applicants and recipients of Recovery Act funding.

Pursuant to the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.412, I have delegated to the Civil Rights Division my authority to promulgate directives to federal agencies to ensure that federal agencies carry out their responsibilities to vigorously enforce these statutes. I have instructed the Civil Rights Division to utilize its oversight authority fully and to assist agencies in achieving nondiscrimination. This may include information sharing, training, targeted partnerships, and the provision of technical assistance on data collection and other topics pertinent to civil rights enforcement.

In the coming weeks, staff in the Civil Rights Division's Federal Coordination and Compliance Section (FCS) will reach out to their agency counterparts to discuss current practices for enforcing the prohibitions of Title VI, Title IX, and Section 504. I urge you to share periodically with FCS any initiatives for enforcing grant-related civil rights laws or new approaches that you have adopted, as well as any substantial Recovery Act case developments. Moreover, in accordance with the Guidelines for the Enforcement of Title VI, 28 C.F.R. § 50.3, and the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.407(d), you should discuss with

Memorandum from the Attorney General

Page 3

Subject: Enforcement of Nondiscrimination Laws in Programs that Receive Recovery Act Funding

FCS any potential refusals and terminations of assistance or formal enforcement actions under consideration.

I look forward to working with you to further strengthen and improve enforcement of civil rights laws throughout the nation. The economic stimulus initiative presents us with a unique opportunity and obligation to ensure that federal dollars are spent in a manner that is consistent with our nation's civil rights laws. Thank you for your continued partnership in this critically important endeavor.

If you have any questions, please call Christine Stoneman, Special Legal Counsel in the Federal Coordination and Compliance Section of the Civil Rights Division at (202) 616-6744.

EXHIBIT B

Judge Quentin L. Kopp, Chairman
Fran Flores, Vice-Chair
Jonna Andrews
David Crane
Todd Driscoll
Mark Lindsey
Burt Pringle
Lynn Schenk
J. (Tom) Stapleton



ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

July 31, 2007

Ron Wright, DGS Reports Coordinator
Department of General Services
Procurement Division, Office of Small Business & DVBE Services
707 Third Street – Room 1-400
West Sacramento, CA 95605

Dear Mr. Wright:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2006-07 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
2005-06	\$8,512	\$3,263	38.33%	\$329	3.87%
2004-05	\$18,755	\$1,184	6.3%	\$2,823	15.05%
Trend					

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has become challenging over the last year and neither the DVBE or SB goals were met for the Authority. Therefore, a DVBE and SB improvement plan is included with the enclosed reports; it details some of the specifics relating to the specialized contracts awarded in this fiscal year.

The 2006-07 Ethnicity, Race and Gender Report and the 2006-07 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger
Procurement Officer

Enclosures

Judge Quentin L. Kopp, Chairman
 Fran Flores*, Vice-Chair
 David Crane
 Rod Dirdon, Sr.
 R. Kirk Lindsey
 Curt Pingle
 Lynn Schenk
 T.J. (Tom) Stapleton
 Tom Umberg
 *past chair



ARNOLD SCHWARZENEGGER
 GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 11, 2008

Ron Wright, DGS Reports Coordinator
 Department of General Services
 Procurement Division, Office of Small Business & DVBE Services
 707 Third Street – Room 1-400
 West Sacramento, CA 95605

Dear Mr. Wright:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2007-08 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
2005-06	\$8,512	\$3,263	38.33%	\$329	3.87%
Trend			decrease		increase

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have specialized fields of experience. Achieving the goal for SB/DVBE has become challenging over the last couple of years and the SB goal was not met for the Authority. Therefore, an SB improvement plan is included with the enclosed reports; it details some of the specifics relating to specialized contracts.

The 2007-08 Ethnicity, Race and Gender Report and the 2007-08 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger
 Procurement Officer

Judge Quentin L. Kopp, Chairman
Fran Flores, Vice-Chair
Donna Andrews
David Crane
Rod Dineen
R Kirk Lindsey
Curt Pringle
Lynn Schenk
T J (Tom) Stapleton



ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 6, 2009

Alex Mora, DGS Reports Coordinator
Department of General Services
Procurement Division, Office of Small Business & DVBE Services
707 Third Street – Room 1-400
West Sacramento, CA 95605

Dear Mr. Mora:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2008-09 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2008-09	\$169,025,908	\$5,359,981	3.17%	\$5,367,091	3.18%
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
Trend			increase		increase

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has become challenging over the last year and the SB goals were not met for the Authority. Therefore, a SB improvement plan is included with the enclosed reports; it details some of the specifics relating to the specialized contracts awarded in this fiscal year.

The 2008-09 Ethnicity, Race and Gender Report and the 2008-09 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger
Procurement Officer

Enclosures

Curt Pringle, Chairman
Tom Umberg, Vice-Chair
Russell Burns
David Crane
Rod Dirdon, Sr.*
Fran Florez*
Richard Katz
Judge Quentin L. Kopp*
Lynn Schenk
*past chair



ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 5, 2010

Tanya Little, DGS Reports Manager
Department of General Services
Procurement Division, Office of Small Business & DVBE Services
707 Third Street - Room 1-400
West Sacramento, CA 95605

Dear Ms. Little:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2009-10 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2009-10	\$18,460,848	\$5,118,018	27.72%	\$1,304,777	7.07%
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
Trend					

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. Due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has been challenging, but the DVBE and SB goals were met for the Authority this past year.

The 2006-07 Ethnicity, Race and Gender Report and the 2006-07 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger
Procurement Officer

Enclosures

EXHIBIT C

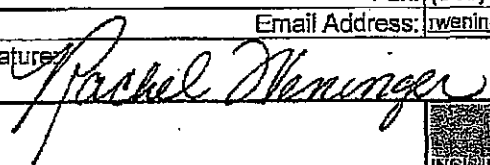
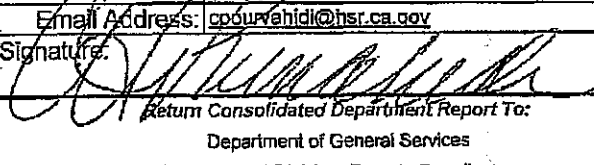
Ethnicity, Race and Gender (ERG) Report

Agency: California High-Speed Rail Authority		Department:			
Fiscal Year: 06/07		All Contracts			
		Goods Column A	Services Column B	Construction Column C	Totals Column D
Part 1	Ethnicity Classifications				
	Asian-Indian	\$ -	\$ -	\$ -	\$ -
	Black	\$ -	\$ -	\$ -	\$ -
	Hispanic	\$ -	\$ -	\$ -	\$ -
	Native American	\$ -	\$ -	\$ -	\$ -
	Pacific-Asian	\$ -	\$ -	\$ -	\$ -
	Other	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -

Part 2	Race Classifications				
	American Indian or Alaska Native	\$ -	\$ -	\$ -	\$ -
	Asian	\$ -	\$ -	\$ -	\$ -
	Black or African American	\$ -	\$ -	\$ -	\$ -
	Native Hawaiian or Other Pacific Islander	\$ -	\$ -	\$ -	\$ -
	White	\$ -	\$ -	\$ -	\$ -
	Other	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -

Part 3	Gender				
	Female	\$ -	\$ -	\$ -	\$ -
	Male	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -

Comments: Our agency does not have a system to track this information. However, we are developing a system to track it in future contracts if the voluntary information is reported.

Part 4	Prepared By:		Approved By:	
	Name:	Rachel Weninger	Name:	Carrie Pourvahidi
	Title:	Staff Services Analyst	Title:	Deputy Director
	Telephone:	(916) 324-9456	Telephone:	(916) 322-7422
	Fax:	(916) 322-0827	Fax:	(916) 322-0827
	Email Address:		Email Address:	
	rweninger@hsr.ca.gov		cpourvahidi@hsr.ca.gov	
	Signature: 		Signature: 	

INCLUDE STD 810 and Consulting Services Reports with submission of this report.

Return Consolidated Department Report To:
 Department of General Services
 Procurement Division, Reports Coordinator
 707 3rd Street, 1st Floor, Room 400, IMS Z-1
 West Sacramento, CA 95605

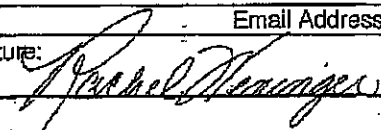
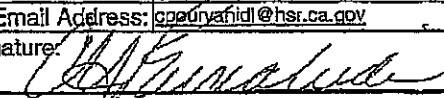
Ethnicity, Race and Gender (ERG) Report

Agency: California High-Speed Rail Authority		Department:			
Fiscal Year: 06/07		All Contracts			
		Goods	Services	Construction	Totals
		Column A	Column B	Column C	Column D
Ethnicity Classifications					
P a r t 1	Asian-Indian	\$ -	\$ -	\$ -	\$ -
	Black	\$ -	\$ -	\$ -	\$ -
	Hispanic	\$ -	\$ -	\$ -	\$ -
	Native American	\$ -	\$ -	\$ -	\$ -
	Pacific-Asian	\$ -	\$ -	\$ -	\$ -
	Other	\$ -	\$ -	\$ -	\$ -
TOTALS		\$ -	\$ -	\$ -	\$ -

Race Classifications					
P a r t 2	American Indian or Alaska Native	\$ -	\$ -	\$ -	\$ -
	Asian	\$ -	\$ -	\$ -	\$ -
	Black or African American	\$ -	\$ -	\$ -	\$ -
	Native Hawaiian or Other Pacific Islander	\$ -	\$ -	\$ -	\$ -
	White	\$ -	\$ -	\$ -	\$ -
	Other	\$ -	\$ -	\$ -	\$ -
TOTALS		\$ -	\$ -	\$ -	\$ -

Gender					
P a r t 3	Female	\$ -	\$ -	\$ -	\$ -
	Male	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -

3 **Comments** Our agency does not have a system to track this information. However, we are developing a system to track it in future contracts if the voluntary information is reported

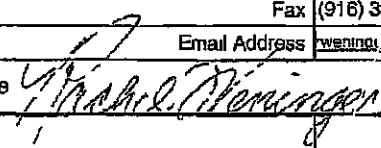
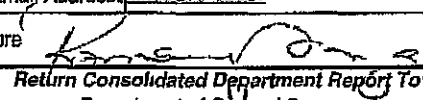
Prepared By:		Approved By:	
P a r t 4	Name: Rachel Weninger	Name: Carrie Pourvahidi	
	Title: Staff Services Analyst	Title: Deputy Director	
	Telephone: (916) 324-9456	Telephone: (916) 322-1422	
	Fax: (916) 322-0827	Fax: (916) 322-0827	
	Email Address: rweninger@hsr.ca.gov	Email Address: cpourvahidi@hsr.ca.gov	
Signature: 		Signature: 	

INCLUDE STEP 10 and Consulting Services Reports with submission of this report

Return Consolidated Department Report To:
 Department of General Services
 Procurement Division, Reports Coordinator
 707 3rd Street, 1st Floor, Room 400, IMS Z-1
 West Sacramento, CA 95605

Ethnicity, Race and Gender (ERG) Report

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION

Agency		CA High-Speed Rail Authority		Department			
Fiscal Year:		9-Aug		All Contracts			
		Goods	Services	Construction	Totals		
		Column A	Column B	Column C	Column D		
Part 1	Ethnicity Classifications						
	Asian-Indian		\$ -	\$ -	\$ -	\$ -	
	Black		\$ -	\$ -	\$ -	\$ -	
	Hispanic		\$ -	\$ -	\$ -	\$ -	
	Native American		\$ -	\$ -	\$ -	\$ -	
	Pacific Asian		\$ -	\$ -	\$ -	\$ -	
	Other		\$ -	\$ -	\$ -	\$ -	
	TOTALS		\$ -	\$ -	\$ -	\$ -	
Part 2	Race Classifications						
	American Indian or Alaska Native		\$ -	\$ -	\$ -	\$ -	
	Asian		\$ -	\$ -	\$ -	\$ -	
	Black or African American		\$ -	\$ -	\$ -	\$ -	
	Native Hawaiian or Other Pacific Islander		\$ -	\$ -	\$ -	\$ -	
	White		\$ -	\$ -	\$ -	\$ -	
	Other		\$ -	\$ -	\$ -	\$ -	
	TOTALS		\$ -	\$ -	\$ -	\$ -	
Part 3	Gender						
	Female		\$ -	\$ -	\$ -	\$ -	
	Male		\$ -	\$ -	\$ -	\$ -	
	TOTALS		\$ -	\$ -	\$ -	\$ -	
Comments This information was not supplied by the vendors.							
Part 4	Prepared By			Approved By			
	Name	Rachel Weninger		Name	Rosemary Meja		
	Title	SB/DVBE Advocate		Title	Chief Fiscal Officer		
	Telephone	(916) 324-9456		Telephone	(916) 324-9645		
	Fax	(916) 322-0827		Fax	(916) 322-0827		
	Email Address	rweninger@hsr.ca.gov		Email Address	meja@r.s.ca.gov		
Signature				Signature			
INCLUDE STD 810 and Consulting Services Reports with submission of this report		Return Consolidated Department Report To: Department of General Services Procurement Division - OSDS Attn: Reports Coordinator 707 3rd Street, Room 1-400, IMS Z-1, MS 210 West Sacramento CA 95605					
ERG Form (Rev. June 2008)							

Ethnicity, Race and Gender (ERG) Report

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION

Agency		CA High Speed Rail Authority		Department	
Fiscal Year		2009/2010		All Contracts	
		Goods	Services	Construction	Totals
		Column A	Column B	Column C	Column D
P a r t 1	Ethnicity Classifications				
	Asian-Indian	\$ -	\$ -	\$ -	\$ -
	Black	\$ -	\$ -	\$ -	\$ -
	Hispanic	\$ -	\$ -	\$ -	\$ -
	Native American	\$ -	\$ -	\$ -	\$ -
	Pacific Asian	\$ -	\$ -	\$ -	\$ -
	Other	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -
P a r t 2	Race Classifications				
	American Indian or Alaska Native	\$ -	\$ -	\$ -	\$ -
	Asian	\$ -	\$ -	\$ -	\$ -
	Black or African American	\$ -	\$ -	\$ -	\$ -
	Native Hawaiian or Other Pacific Islander	\$ -	\$ -	\$ -	\$ -
	White	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -
P a r t 3	Gender				
	Female	\$ -	\$ -	\$ -	\$ -
	Male	\$ -	\$ -	\$ -	\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -
Comments No information provided					
P a r t 4	Prepared By			Approved By	
	Name	Rachel Weninger		Name	Vickie Janek
	Title	SSA		Title	Business and Procurement Officer
	Telephone	916-324-9456		Telephone	916-324-9339
	Fax	916-322 0827		Fax	916-322-0827
	Email Address	rweninger@hsr.ca.gov		Email Address	vjanek@hsr.ca.gov
Signature <i>[Signature]</i> 1/12/10			Signature <i>[Signature]</i>		
ERG Form (Rev. June 2008)		INCLUDE STD 810 and Consulting Services Reports with submission of this report		Return Consolidated Department Report To: Department of General Services Procurement Division - OSDS Attn: Reports Coordinator 707 3rd Street, Room 1-400 IMS Z-1, MS 210 West Sacramento CA 95605	

Important Note The data contained herein was submitted voluntarily therefore it may not accurately depict the departments overall contracting and purchasing activity

EXHIBIT D

**Improvement Plan Outline for Small Business
FY 07/08**

Prepared by: California High-Speed Rail Authority

I. Summary of Small Business Participation

The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.

II. Explain Why the Participation Goal Was Not Achieved

In the 06/07 fiscal year the department did not require 25% participation from SB/MBs for several large scale contracts. The department awarded several large contract dollars for services that required businesses to have staff throughout the State and World to complete the requirements of the contract. For example the department required a Program Management that had a large staff which works throughout the State to handle the development of a statewide high-speed rail system.

III. Plan to Enhance Contracting Opportunities for Small Business

A. Policy

The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent.

B. Collaborative Efforts

The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 07/08 fiscal year.

C. Contracting Practices

Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.

IV. Planning and Advocacy

The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.

V. Monitor and Continuously Improve

The department will look quarterly at the awarded contracts during the 07/08 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.

**Improvement Plan Outline for Small Business
FY 08/09**

Prepared by: California High-Speed Rail Authority

I. Summary of Small Business Participation

The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.

II. Explain Why the Participation Goal Was Not Achieved

In the 07/08 fiscal year the department did not require 25% participation from SB/MBs for sole-sourced and specialized contracts. The department awarded several large contract dollars for services that required businesses to have expertise in fields that are not common area. For example the department required legal counsel in Public/Private Partnerships and obtained services from a large law firm with experience and knowledge in that field. There were no SBs that had the level of expertise needed to fulfill our agency's requirement.

III. Plan to Enhance Contracting Opportunities for Small Business

A. Policy

The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent.

B. Collaborative Efforts

The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 08/09 fiscal year.

C. Contracting Practices

Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.

IV. Planning and Advocacy

The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.

V. Monitor and Continuously Improve

The department will look quarterly at the awarded contracts during the 08/09 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.

**Improvement Plan Outline for Small Business
FY 08/09**

Prepared by: California High-Speed Rail Authority

I. Summary of Small Business Participation

The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.

II. Explain Why the Participation Goal Was Not Achieved

In the 08/09 fiscal year the department did not require 25% participation from SB/MBs for several large scale contracts. The department awarded several large contract dollars for services that required businesses to have staff throughout the State and World to complete the requirements of the contract. For example the department required three Environmental/Engineering contracts that required large companies that had specialization in transportation environmental work and could handle the development of a statewide high-speed rail system.

III. Plan to Enhance Contracting Opportunities for Small Business

A. Policy

The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent. Contracts will be advertised in the new Bidsync system that has more resources for Small Business to connect with large vendors as sub-contractors on contracts.

B. Collaborative Efforts

The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 08/09 fiscal year.

C. Contracting Practices

Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.

IV. Planning and Advocacy

The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.

V. Monitor and Continuously Improve

The department will look quarterly at the awarded contracts during the 08/09 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.

EXHIBIT E

California High-Speed Rail Authority
Questions and Written Responses
For
RFQs HSR08-03, HSR08-04, & HSR08-05

Q1) Is it permissible to include appendices that are not part of the official SOQ and therefore outside the 60-page limit?

A1) Yes.

Q2) Do the subconsultant transmittal letters and DVBE forms count within the 60-page SOQ limit? If no, is it permissible to include this information as part of an appendix that is outside of the 60-page SOQ limit?

A2) No. Yes it is permissible to include the DVBE forms as part of an appendix.

Q3) What are the schedule expectations for completion of preliminary engineering and environmental review (leading to one or more RODs) for the 3 corridors?

A3) The timeline for the completion of the preliminary engineering and the environmental review (leading to the ROD) is 36 months from the issuance of the NOI/NOP.

Q4) What are the Authority's funding expectations for the 3 corridors in the 2008-2009 timeframe, so that appropriate workplans can be developed?

A4) At this time, without a state budget for the 2008/09 fiscal year, it is difficult to accurately answer this question. Most likely the contracts for all three corridors will not be fully executed until early October, followed by a period of mobilizing the teams, leaving approximately 6 months to begin the preliminary engineering and environmental work.

Q5) For 03 Altamont Corridor: Assuming Proposition 1 is passed by the voters, what are the Authority's expectations regarding bond fund availability to the Altamont Corridor for engineering and environmental review, with respect to the \$9 billion for the high speed train program and \$950 million for regional projects that provide connectivity?

A5) If Proposition 1, in its current form, passes the Authority will continue the planning efforts in this corridor as described in the Bay Area – Central Valley Program EIR/EIS utilizing proceeds from the \$9 billion bond measure. The \$950 million regional funds have been allocated by formula and will be administered by the CTC.

Q6) Acumen is a DBE. We provide strategic planning and project control services and other transportation consulting needs. Since there is no formal pre-bid meeting or sign in sheet, can you provide a list of expected consultants one might expect to go after this RFQ so we can offer them our services and discuss teaming, or offer to provide our services to their firms?

A6) *Lists of those that requested the RFQs from the State Contracts Register as of July 21, 2008 are provided as an attachment. Please note however, these lists do not include those that downloaded the RFQs from the Authority's website, contacted the Authority staff directly, or took hard copies at CHSRA board meetings.*

Q7) Is there a list that we could post our services for this RFP as a DBE professional services firm?

A7) *No.*

Q8) If there is not a list for DBE's, can one be created and posted? We would suggest the website or reference to a link.

A8) *Firms can post advertisements directly to the RFQ announcements on the California State Contract Register (<http://www.cscr.dqs.ca.gov/cscr/>).*

Q9) The RFQ states that there is a 60 page limit not including resumes. Since the transmittal letters (for both prime and subconsultants) are not part of the technical qualifications, could they please also be excluded from the 60 page count?

A9) *Yes.*

Q10) Can we assume that the tab dividers will not count as pages in the 60 page count?

A10) *Yes.*

Q11) Can we exclude the DVBE Standard Form 840 from the 60 page count limitation?

A11) *Yes.*

Q12) Will a one-page *Table of Contents* count towards the 60 page count?

A12) *No.*

Q13) Page 1 of the RFQ states the RFQ number as **Number HSR08-03**, and this same number (**HSR08-0003**) is affixed in the upper right-hand corner of the RFQ pages, however, on page 3 under "SOQ Package Submittal Instructions", it states that the SOQ must be submitted in a sealed package labeled as follows: **RFQ Number HSR08-0001**. Can you please clarify and advise as to which number is the correct number to be used for this submission?

A13) The correct contract number to be used for this submission is HSR08-03.

Q14) What are the specific requirements and documentation needed to satisfy the Financial Responsibility criteria?

A14) Firms proposing on the RFQs are required to carry professional liability insurance and should provide evidence of at least \$5 million in professional liability insurance. Firms should also provide a copy of their certified overhead statement and present their last two years of certified financial statements.

Q15) Can the Financial Responsibility portion of the SOQ be excluded from the 60 page count?

A15) Yes.